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8 Attorneys for Defendant  
9 County of Lake  
10

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 DALLAS WOLL,

15 Plaintiff,

16 v.

17 COUNTY OF LAKE, MARY JANE  
18 FIGALDE, and HENRY BOUILLERCE,

19 Defendants.  
20  
21 \_\_\_\_\_ /

Case No. CV 07 6299 BZ

*(Unlimited Civil Case)*

Hon. Magistrate Bernard Zimmerman

**DEFENDANT COUNTY OF LAKE'S  
ANSWER TO COMPLAINT**

22 Comes now Defendant County of Lake in response to plaintiff's complaint.

23 **GENERAL RESPONSE TO PARAGRAPHS**

24 **1 through 15, Inclusive**

25 **JURISDICTION**

26 1. The County denies the applicability of Title 42 of the United States Code §1983 due to  
27 lack of information and knowledge sufficient to form a belief. Defendant admits that defendants  
28 reside in this Judicial District.

**PARTIES**

2. The County denies the allegations of paragraph 2 based upon a lack of information and  
knowledge sufficient to form a belief.

3. The County admits the allegations of paragraph 3.

1           4. The County denies the allegation that Mary Jane Figalde is an employee of the Lake  
2 County Community Development and denies the remaining allegations of paragraph 4 for lack of  
3 information and belief.

4           5. The County denies, generally and specifically, the allegations of Paragraph 5 except for  
5 the allegation that said parcel is located in an unincorporated area of the County of Lake, at 6585  
6 Jacobsen Road, Kelseyville, California.

7           6. The County admits that the Lake County Community Development Department recorded  
8 a Notice of Nuisance on December 16, 2005 but denies, generally and specifically, the remaining  
9 allegations of the first sentence of Paragraph 6. The County denies, generally and specifically, the  
10 remaining allegations of Paragraph 6 for lack of information and belief.

11           7. The County denies, generally and specifically, the allegations of Paragraph 7.

12           8. The County denies, generally and specifically, the allegations of Paragraph 8.

13           9. The County denies, generally and specifically, the allegations of Paragraph 9.

14           10. The County denies, generally and specifically, the allegations of Paragraph 10.

15           11. The County denies, generally and specifically, the allegations of Paragraph 11.

16           12. The County denies, generally and specifically, the allegations of Paragraph 12.

17           13. The County denies, generally and specifically, the allegations of Paragraph 13.

18           14. The County denies, generally and specifically, the allegations of Paragraph 14.

19           15. The County denies, generally and specifically, the allegations of Paragraph 15.

20                           **JURY TRIAL DEMANDED**

21           The County likewise demands a trial by jury.

22                           **AFFIRMATIVE DEFENSES**

23           AS AND FOR A SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to the  
24 complaint, this answering defendant alleges that the complaint fails to state facts sufficient to  
25 constitute a cause of action against any of said defendants.

26           AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
27 the complaint, this answering defendant alleges that should plaintiff recover damages against it, this  
28 answering defendant should be entitled to have the amount reduced or eliminated to the extent that

1 plaintiffs' negligence and/or fault and the negligence and/or fault of the decedent, caused the damages  
2 herein.

3 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
4 the complaint, this answering defendant alleges that plaintiff assumed the risk of the matters referred  
5 to in the complaint and that he knew and appreciated the nature of the risk, and that he voluntarily  
6 accepted the risk.

7 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
8 the complaint, this answering defendant alleges that the sole and/or partial proximate cause of the  
9 damages claimed was due to the negligence of co-defendants, and other persons, firms or entities not  
10 specifically named in the complaint.

11 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
12 the complaint, this answering defendant alleges that in the event it is held liable to plaintiff, which  
13 liability is expressly denied, and the co-defendants or other persons, firms or entities not specifically  
14 named in the complaint, are likewise held liable, this defendant is entitled to percentage contribution  
15 of the total liability from said co-defendant and/or unnamed parties in accordance with the principals  
16 of equitable indemnity and comparative contribution.

17 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
18 the complaint herein, and each claim for relief thereof, this answering defendant alleges that at all  
19 times mentioned in plaintiff's complaint, this defendant acted in good faith with the reasonable belief  
20 as to the lawfulness of its actions.

21 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
22 the complaint, this answering defendant alleges that should plaintiff recover damages against  
23 defendants, or any of them, this defendant should be entitled to have the amount reduced or  
24 eliminated the extent that plaintiff and/or decedent failed take reasonable steps to mitigate those dam-  
25 ages.

26 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
27 the complaint herein, and each claim for relief thereof, this answering defendant alleges that at all  
28 times mentioned in plaintiff's complaint, the actions of this defendant was privileged under the

1 surrounding circumstances.

2 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
3 the complaint herein, and each claim for relief thereof, this answering defendant alleges that at all  
4 times mentioned in plaintiff's complaint the actions of the defendants, and each of them, were based  
5 exclusively upon bona fide law enforcement considerations with a reasonable belief that their actions  
6 were lawful, and as such they are protected by the qualified immunity privilege.

7 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
8 the complaint herein, and each claim for relief thereof, this answering defendant alleges that plaintiff  
9 failed to exhaust administrative remedies.

10 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
11 the complaint herein, and each claim for relief thereof, this answering defendant alleges that, to the  
12 extent the allegations made against this answering defendant by plaintiffs' attempt to enlarge upon the  
13 facts, contentions, or theories set forth in their respective claims heretofore presented to defendant,  
14 said complaint is in violation of Government Code Sections 900, et seq., and defendant expressly  
15 reserves the right to move to strike any and all such allegations and to object to the admission of any  
16 evidence directed to the proof thereof.

17 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
18 the complaint herein, this answering defendant alleges that it is immune from liability pursuant to the  
19 provisions of Government Code §§815 through 856.6, inclusive, §§900 through 913.2, inclusive, and  
20 §§950 through 951, inclusive.

21 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
22 the complaint herein, and each claim for relief thereof, this answering defendant alleges that plaintiff  
23 had full knowledge of the risks involved in the illegal activity in which he was engaged; that plaintiff  
24 voluntarily assumed all the risks incident to the activity engaged in at the time and place mentioned in  
25 the complaint; and that the loss or damage, if any, sustained by plaintiff was caused by said risks  
26 which were accepted and voluntarily assumed by plaintiff when he engaged in said activities.

27 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
28 the complaint herein, and each claim for relief thereof, this answering defendant alleges that any

1 injuries suffered by plaintiff were caused by supervening events over which these defendants have no  
2 control.

3 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
4 the complaint herein, and each claim for relief thereof, this answering defendant alleges that by way  
5 of a plea of comparative negligence, decedent was negligent in and about the matters and activities  
6 alleged; that said negligence contributed to and was a proximate cause of plaintiffs' alleged injuries  
7 and damages, if any, or was the sole cause thereof; and if plaintiff is entitled to recover damages  
8 against defendant by virtue of this complaint, defendant prays that the recovery be diminished or  
9 extinguished by reason of the negligence of the decedent in proportion to the degree of fault  
10 attributable to him.

11 AS AND FOR A FURTHER SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE to  
12 the complaint, this answering defendant alleges that, to the extent that plaintiff's civil rights were not  
13 violated, no cause of action for violation of plaintiff's civil rights will lie.

14 WHEREFORE, the County prays as follows:

- 15 1. That plaintiff take nothing by reason of said complaint.  
16 2. That this answering defendant be awarded reasonable attorney's fees, costs of suit and  
17 such other and further relief as the Court deems just.

18  
19 Dated: February 27, 2008

KELLY JACKSON & CHRISTIANSON, LLP

20  
21 By

22 Clay J. Christianson  
Attorneys for Defendant COUNTY OF LAKE

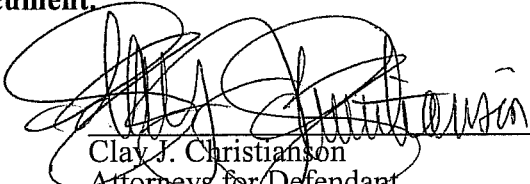
23  
24 **DEMAND FOR TRIAL BY JURY**

25 By way of endorsement hereon, the County of Lake hereby demands a trial by jury.

26  
27  
28 Clay J. Christianson  
Attorneys for Defendant  
County of Lake

**SIGNATURE ATTESTATION**

**I attest that I have on file all holograph signatures for any signatures indicated by a conformed signature (/s/) within this e-filed document.**



Clay J. Christianson  
Attorneys for Defendant  
County of Lake

Case No. CV 07 6299 BZ

U.S. District Court - Northern District

PROOF OF SERVICE BY MAIL  
[FRCivP 5(b)]

I am employed in the County of Sonoma, California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is 90 South E Street, Suite 310, Santa Rosa, California 95404. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service, such correspondence would be deposited with the United States Postal Service that same day in the ordinary court of business.

On the date of execution of this declaration, I served the attached:

**DEFENDANT COUNTY OF LAKE'S ANSWER TO COMPLAINT**

on the interested parties in said cause, addressed as follows:

Frear Stephen Schmid, Esq.  
177 Post Street, Suite 890  
San Francisco, CA 94108

*Attorney for Plaintiff Dallas Woll*  
(415) 788-5957  
(415) 788-5958 Fax

X (BY MAIL) I placed each such sealed envelope, with postage thereon fully prepaid, on the date of execution of this declaration, with our office outgoing mail following ordinary business practices.

\_\_\_\_ (BY PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the addressee(s) noted above.

\_\_\_\_ (BY FACSIMILE) I caused the said document to be transmitted by Facsimile machine to the number indicated above.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made, and that this declaration was executed on February 27, 2008, at Santa Rosa, California.

  
Linda Moldrem